

714E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Business day*” means any calendar day except Saturday, Sunday, or a public holiday including a holiday observed on a Monday.

2. “*Contract*” means an agreement, or a term in an agreement, between a foreclosure consultant and an owner for the rendition of a service.

3. a. “*Foreclosure consultant*” means a person who, directly or indirectly, makes a solicitation, representation, or offer to an owner to perform for compensation or who, for compensation, performs a service which the person in any manner represents will do any of the following:

(1) Stop or postpone a foreclosure, foreclosure sale, forfeiture, sheriff’s sale, or tax sale.
(2) Obtain a forbearance, modification, or repayment plan for a beneficiary or mortgagee.
(3) Assist the owner to exercise the right of redemption, cure the mortgage default, cure the real estate contract default, or redeem the property from a tax sale.

(4) Obtain an extension of the period within which the owner may reinstate the owner’s obligation.

(5) Obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage.

(6) Assist the owner in foreclosure, foreclosure sale, forfeiture, sheriff’s sale, tax sale, or loan default to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner’s credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or a forfeiture of a real estate contract.

(8) Save the owner’s residence from foreclosure, foreclosure sale, forfeiture, sheriff’s sale, or tax sale.

(9) Negotiate or obtain a mortgage loan or real estate contract modification, forbearance, repayment plan, or other loss mitigation for the consumer.

b. “*Foreclosure consultant*” does not include any of the following:

(1) A person licensed to practice law in this state when the person renders service in the course of the person’s practice as an attorney at law.

(2) A person licensed to engage in the business of debt management under chapter 533A, when the person is engaged in the business of debt management.

(3) A person licensed as a real estate broker or salesperson under chapter 543B, when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure.

(4) A person licensed as an accountant under chapter 542 when the person is acting in any capacity for which the person is licensed under those provisions.

(5) A person or the person’s authorized agent acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide services.

(6) A person who holds or is owed an obligation secured by a lien on a residence in foreclosure when the person performs services in connection with the obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance.

(7) A person or entity doing business under any law of this state, or of the United States, relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee approved by the United States department of housing and urban development, and a subsidiary or affiliate of these persons or entities, and an agent or employee of these persons or entities while engaged in the business of such persons or entities.

(8) A person licensed as a mortgage broker or mortgage banker pursuant to chapter 535B, when acting under the authority of that license.

(9) A person registered as a mortgage broker or mortgage banker or originator pursuant to chapter 535B, when acting under the authority of that registration.

(10) A nonprofit agency or organization that offers counseling or advice to an owner of

a residence in foreclosure or loan default if the nonprofit agency or organization does not contract for services with for-profit lenders or foreclosure purchasers.

(11) A judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 654.2D, but excluding a person who purchased the claim after such personal service.

(12) A foreclosure purchaser as defined in section 714F.1.

4. "*Foreclosure reconveyance*" means a transaction involving all of the following:

a. The transfer of title to real property by an owner during a foreclosure proceeding, forfeiture proceeding, or tax sale, either by transfer of interest from the owner or by creation of a mortgage or other lien or encumbrance during the foreclosure, forfeiture, or tax sale process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder.

b. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the owner by the acquirer or a person acting in participation with the acquirer that allows the owner to possess either the residence in foreclosure or any other real property, which interest includes but is not limited to an interest in a contract for deed, purchase agreement, option to purchase, or lease.

5. "*Owner*" means the record owner or holder of an equitable interest through contract of the residence in foreclosure at the time the notice of pendency was recorded, or at the time the default notice was served.

6. "*Person*" means the same as defined in section 4.1.

7. "*Residence in foreclosure*" or "*affected residence*" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as the owner's principal place of residence, where a delinquency or default on any loan payment or debt is secured by or attached to the residential real property including but not limited to contract for deed payments, real estate contracts, or real estate taxes.

8. "*Service*" includes but is not limited to any of the following:

a. Debt, budget, or financial counseling of any type.

b. Receiving money for the purpose of distributing the money to creditors in payment or partial payment of an obligation secured by a lien on a residence in foreclosure.

c. Contacting creditors on behalf of an owner of a residence in foreclosure.

d. Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure, forfeiture, or tax sale may cure the owner's default and reinstate the owner's obligation.

e. Arranging or attempting to arrange for a delay or postponement of the time of sale of the residence in foreclosure, forfeiture, or tax sale.

f. Advising the filing of a document or assisting in any manner in the preparation of a document for filing with a bankruptcy court.

g. Giving advice, explanation, or instruction to an owner of a residence in foreclosure, forfeiture, or tax sale which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the affected residence, the full satisfaction of that obligation, or the postponement or avoidance of a sale or loss of the affected residence, pursuant to a power of sale contained in a mortgage.

2008 Acts, ch 1125, §1, 19; 2009 Acts, ch 133, §179